INSURANCE—LIFE INSURANCE—WARRANTIES.—NATIONAL LIFE INS. CO. OF U. S. A. v. REPPOND, 96 S. W. 778 (TEX.).—*Held,* that, where the statements in the application for a life policy are made warranties, it is essential to the validity of the policy that the statements be true without reference to the question of their materiality.

Warranties are in the nature of conditions precedent, so that the rights of the insured depend on his strict compliance with the warranties. *Fowler v. Ins. Co.,* 6 Cow. (N. Y.) 673; *Metropolitan Life Ins. Co. v. Rutherford,* 98 Va. 195. In the present case, the statements in the application were made warranties. Stipulations of this character are necessary to protect the insurer. *Vance on Insurance,* Section 104. Courts will presume conclusively that statements are material when they are made warranties by the parties, as in this case, and a breach of a warranty will be a good defense in an action on the policy. *Hutchinson v. Ins. Co.* 39 S. W. (Texas) 325; *Stensgaard v. St. Paul Real Estate Title Ins. Co.,* 50 Minn. 429; *Jeffries v. Ins. Co., 22* Wall. (U. S.) 47.

MANDAMUS—RIGHT TO APPEAL.—HANSON V. POLICE JURY OF ST. MARY'S PARISH, 41 So. (LA.) 321.—*Held,* that mandamus generally will not lie if there is a right of appeal.

The functions of this prerogative writ are the enforcement of duties to the public by officers, and others who neglect or refuse to perform them and for which there is no other specific legal remedy, *Legg v. City of Annapolis,* 42 Md. 203, and mandamus cannot be used to perform the office of an appeal or a writ of error, *Ex parte Schwab,* 98 U. S. 240. This general rule is too far-sweeping and invites the criticism of a rigidity approaching harshness, for this writ will be granted when the remedy by action is doubtful. *Clark v. Miller,* 47 Barber, 38; or even if there is an equitable remedy existing. *Commonwealth v. Allegheny County Com'rs,* 32 Pa. 218. The same exception is taken when a writ of error is inadequate by reason of expense and delay involved, *North Alabama Development Co. v. Orman,* 71 Fed. 764; or when there is a remedy by appeal, if the action is clearly inadequate, *City of Huron v. Campbell,* 3 S. D. 309; or when an appeal is proper, but there is no one to prosecute it, as, after a claim has been filed by an administrator against the estate of another decedent, if such administrator die and a motion to revive the action in the name of his successor is denied, the only remedy is by mandamus, *Reynolds v. Crook,* 95 Ala. 570.

MASTER AND SERVANT—SAFE PLACE TO WORK.—WALKER V. GLEASON, 96 N. Y. SUPP. 843 (N. Y.).—Landlord contracted with a tenant to keep the hall lamps in the building in order, and subsequently, while the tenant was working with the lamps in one of her own rooms, the ceiling fell and injured her. Thereupon the landlord was sued for the personal injuries, the tenant contending that the relation of master and servant existed.—*Held,* that under these circumstances the landlord was not liable on the ground that, as an employer, he had failed to furnish a safe place to work.

... NUISANCE—RIGHT TO RECOVER DAMAGES.—MILLER V. EDISON ELECTRIC ILLUM. CO., 3 L. R. A. (N. S.) 1060 (N. Y.).—*Held,* that a lessor cannot recover damages for injury to the enjoyment and occupation of premises while they are in possession of a tenant, by the maintenance of a nuisance not of a permanent character on adjoining premises, although during such

continuance the lease had terminated and been renewed at a reduced rental because of the nuisance.

PARTNERSHIP—TRADE-MARKS AND TRADE NAMES—RIGHTS OF RETIRING PARTNER.—WHITE V. TROWBRIDGE, 64 ATL. 862 (PA.).—A retiring partner disposed of all his rights and property in the firm, but entered into no contract restricting him from prosecuting a similar competing business. *Held,* that he is not deprived of the right to use his own name in connection with such competing business, from the fact that his surname is a portion of the trade-mark used by the firm of which he was formerly a member.

A person has the right to the honest use of his own name, even to the infringement of a trade-mark. *Derringer v. Plate,* 29 Cal. 293; *Schier v. Johnson,* 111 Mass. 238. However, an assignment by a retiring partner of all his stock, property and effects carries the right to use his personal name when it has become a trade name. *Hoxie v. Chaney,* 143 Mass. 592. And it follows that the firm is entitled to protection in the use of such name. *Myers v. Buggy Co.,* 54 Mich. 215. In some cases this doctrine has been extended and *Le Page v. Russia Cement Co.,* 51 Fed. 941, holds that, when an individual's name has become a trade name belonging to another person, the right to use his name in connection with an article, even to state that it is manufactured by him, must be denied to a person who has previously disposed of his interest in the business. The better rule, however, would seem to be that, when a person has in any way acquired a right to a trade name, another person is only precluded from using his own name in such a way as to confuse his business with that of the original firm. *Walter Baker & Co. v. Baker,* 87 Fed. 209; *Gage v. Pub. Co.,* 10 Ont. App. 402.

RAILROADS—NEGLIGENT OPERATION—NUISANCE.—COLGATE V. N. Y. CENT. RY. CO., 100 N. Y. SUPP. 650.—*Held,* where a railroad company so negligently operated its road as to permit unnecessary whistling and bell ringing in the residential section of a town, such acts constituted a private nuisance to an abutting land owner.

An action will not lie for mere consequential injuries caused by the proper and careful operation of a railroad. *Beseman v. Penn. Ry. Co.,* 50 N. J. Law 235; *Struthers v. Dunkirk W. & P. Ry. Co.,* 87 Pa. 282. But whistling and bell ringing as allowed by the legislature, are not signals for the convenience of its employees, and if used as such and thereby the public is unnecessarily disturbed, they constitute a legal nuisance. *Presbrey v. Railway Co.,* 103 Mass. 1; *Williams v. N. Y. Cent. Ry. Co.,* 16 N. Y. 97. What may be unobjectionable in a legal sense, in one locality may be a legal nuisance in another. *First Baptist Church v. Utica & S. R. Co.,* 6 Barb. 373; *Rodenbransen v. Craven,* 141 Pa. 546. The weight of authority in the United States is that, to constitute a nuisance, the acts must be such as to materially interfere with the comfort of an ordinary, reasonable person in the vicinity, *Sparhawk v. Railway Co.,* 54 Pa. 401; *Westcott v. Middleton,* 43 N. J. Eq. 478; and not merely to incommode a sick person. *Rogers v. Elliott,* 146 Mass. 349; *Fay v. Whitman,* 100 Mass. 76. And it is no defense that all the other persons in that locality are injured in the same way. *Wesson v. Washburn Iron Co.,* 13 Allen, 95.

RELIGIOUS SOCIETIES—TITLE TO PROPERTY—MATERIALITY.—LEE V. METHODIST EPISCOPAL CHURCH IN V. S., 78 N. E. 646 (MASS.).—A grantor con-